

**Reserved**

**1. Case :-** WRIT - A No. - 8335 of 2022

**Petitioner :-** Desh Raj Singh And 8 Others

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Irrigation And Water Resources Deptt., Lko. And 2 Others

**Counsel for Petitioner :-** Meenakshi Singh Parihar, Deepak Singh

**Counsel for Respondent :-** C.S.C.

**And**

**2. Case :-** WRIT - A No. - 7022 of 2022

**Petitioner :-** Desh Raj Singh And 4 Others

**Respondent :-** State Of U.P. Thru. Its Secy. Deptt. Of Irrigation And Water Resources And 2 Others

**Counsel for Petitioner :-** Savita Jain

**Counsel for Respondent :-** C.S.C.

**Hon'ble Dinesh Kumar Singh, J.**

1. Heard Sri H.G.S. Parihar, learned Senior Advocate assisted by Ms Meenakshi Singh Parihar, learned counsel appearing for the petitioners and Sri Ramesh Kumar Singh, Additional Advocate General assisted by Sri P.K. Khare, learned Additional Chief Standing Counsel appearing for the State.

2. Present writ petitions have been filed in respect of the result of "Ziledari Qualifying Examination 2018" held as per Irrigation Department Ziledars' Services Rules, 1963 (hereinafter referred to as 'Rules, 1963') declared on 26.11.2018 for promotion from amongst confirmed Seench Paryavekshak working in the Irrigation and Water Resources Department fulfilling the eligibility condition as prescribed under Rule 6 of the Rules, 1963 i.e. one should be confirmed Seench Paryavekshak and should have continuously worked as Seench Paryavekshak, having 7 years substantive services and should qualify the examination as prescribed under Rule 15 of the Rules, 1963.

3. Vide office orders dated 06.08.2018 and 24.10.2018 issued by the Engineer-in-chief, Head of Department, Irrigation and Water Resources, a three members Examination Committee was constituted to conduct "Ziledari Qualifying Examination, 2018" as per Rules, 1963. Result of the said examination was declared on 26.11.2018.
4. Several complaints were received regarding gross and systematic irregularities and large scale corruption with respect to said Qualifying Examination. Several reports in this regard were published in newspapers and on social media. The complaints, that were received, were primarily with respect to the malpractice and corruption in the examination such as demanding illegal gratification and acceptance of bribe from various candidates in order to pass them in the qualifying examination.
5. Engineer-in-chief, Head of Department, Irrigation and Water Resources considering these complaints and reports wherein sanctity, fairness and transparency of the examination process became doubtful and a casualty, on 29.11.2018 constituted an enquiry committee.
6. There were several complaints against one of the members of the examination committee, namely Raj Kumar Gangwar, Deputy Revenue Officer, Kanpur Division.
7. Enquiry committee submitted its report on 24.01.2019 to the Engineer-in-Chief and the allegations regarding gross irregularities, malpractices and corruption in the "Ziledari Qualifying Examination, 2018" were found to be true. Sri Raj Kumar Gangwar member of the examination committee was placed under suspension.
8. It appears that another two members committee headed by Sri Har Prashad, Chief Engineer submitted its report to the Engineer-in-chief on 15.02.2019 in respect of gross irregularities, malpractices and corruption in conducting the "Ziledari Qualifying Examination, 2018".
9. Considering these two enquiry reports, which would make very sanctity and fairness of the examination suspect, result dated 26.11.2018 of the "Ziledari Qualifying Examination, 2018" was cancelled by the Engineer-in-chief, Head of Department, Irrigation and Water Resources, Government of U.P. vide office order dated 26.07.2019.

**10.** The Engineer-in-chief vide letter dated 02.09.2019 submitted the enquiry report dated 15.02.2019 to the State Government recommending disciplinary proceedings against the Chairman and Members of the Examination Committee who were responsible in conducting the "Ziledari Qualifying Examination, 2018".

**11.** The State Government vide order dated 19.02.2020 decided to suspend and initiate disciplinary proceedings under Rule 7 of the U.P. Government Servant (Disciplinary and Appeal) Rules, 1999 against Sri Rameshwar Kumar Mishra, Chairman, Ramraj and Raj Kumar Gangwar, members of the examination committee regarding corruption, gross irregularities which had adversely affected the sanctity, validity and fairness of the examination.

**12.** Several Seench Paryavekshaks filed writ petition being Writ A No.1965 of 2021, Dharmendra Kumar & Ors vs State of U.P. & Anr before this Court at Allahabad with following prayers:

"(a) a writ, order or direction in the nature of mandamus commanding and directing the respondents to hold the qualifying examination for promotion on the post of Ziledar forthwith at the earliest as provided in Rule 2 of the Appendix B of the Service Rules, 1963.

(b) a writ, order or direction in the nature of mandamus to any other relief which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case;

(c) Award costs of the writ petition to the petitioner throughout."

**13.** The petitioners in the said writ petition had made reference to the order dated 26.07.2019 whereby the result of the "Ziledari Qualifying Examination, 2018" was cancelled and, therefore, they prayed for direction for conducting a fresh examination.

**14.** Coordinate Bench of this Court vide order dated 25.03.2021 disposed of the said writ petition directing the respondents to conduct the qualifying examination for promotion on the post of Ziledar within three months period, provided that there would be no other impediment, and in case petitioners would be found fit for promotion, necessary benefits may be provided to them.

**15.** This said writ petition came to be filed after the result of the Qualifying Examination 2018 dated 26.11.2018 was cancelled vide order dated 26.07.2019.

**16.** It is important to take note of the fact that the petitioners in Writ A No.1965 of 2021 did not challenge the order dated 26.07.2019 cancelling the result of the "Ziledari Qualifying Examination, 2018" and they confined the prayer for holding the examination for promotion.

**17.** Another writ petition being Writ Petition No. 20603(SS) of 2020 was filed by 31 candidates before this Court at Lucknow Bench impugning the order dated 26.07.2019 cancelling the result of the "Ziledari Qualifying Examination, 2018". Despite the order dated 25.03.2021, which was brought to the notice of this Court during the course of hearing of the petition, Coordinate Bench of this Court having taken note of the order dated 25.03.2021 allowed the said writ petition vide judgment and order dated 05.08.2021 on the ground that the order dated 26.07.2019 cancelling the qualifying examination did not record a finding that it was not possible to distinguish the cases of tainted from untainted and there was possibility that all them would have got the benefit of wrongs. It was held that the order dated 26.07.2019 was passed in ulterior disregard to principles of natural justice and without consideration that the most of the candidates did not get benefited of malpractice adopted by the member of the selection committee. Coordinate Bench of this court allowed the writ petition and issued a direction to the respondents to reconsider the claim of the petitioners and other selected candidates for grant of promotion on the post of Ziledar after holding a fresh full-fledged enquiry. Operative part of the order would read as under:-

"**16.** The writ petition succeeds and is allowed with a direction to the respondents to reconsider the claim of the petitioner and other selected candidates for the grant of promotion on the post of Ziledar by holding a fresh full-fledged enquiry to examination and merit of the each and other candidates applied for selection and record specific finding in regard to influence/mal-practice adopted by one of the members of the selection committee and in case the candidates are found involved in such practice an appropriate and speaking order be passed after affording opportunity

of hearing to the petitioners and other candidates of the selection proceeding. The said exercise shall be completed within four months from the date of production of a certified copy of this order.

**17.** Needless to say that in case the petitioners are found to be genuine candidates after passing the order as directed by this Court, they shall be granted promotion on the post of Zildar immediate thereafter. The selection proceeding directed by this Court shall continue after the exercise as directed by way of this order."

**18.** In compliance of the said order 05.08.2021 passed by this Court, an enquiry committee was constituted by the Engineer-in-chief vide order dated 12.01.2022 to segregate tainted and untainted candidates, who had participated in the qualifying Examination, 2018. Sri Prabhat Kumar Dubey Superintending Engineer was appointed as Chairman of the said committee.

**19.** A modification application was moved by the Engineer-in-chief and Head of Department, Irrigation and Water Resources Department, Government of U.P. in Writ A No.1965 of 2021 wherein a direction was issued for holding examination within a period of 3 months bringing it to the notice of the Court the judgment and order dated 05.08.2021 passed in Writ Petition No.20263(SS) of 2020.

**20.** Result of the aforesaid modification application is not known, however, in the counter affidavit, it is said that the said application is still pending.

**21.** Enquiry committee constituted in pursuance of the judgment and order dated 05.08.2021 passed in Writ Petition No.20263(SS) of 2020 gave its reports dated 29.06.2022 and 08.07.2022 to the Engineer-in-Chief, Head of Department, Irrigation and Water Resources Department, Government of U.P.

Relevant findings in the enquiry report dated 29.06.2022 are as under:-

- 02 अभ्यर्थियों की लिखित परीक्षा की अंकतालिका एवं उत्तर पुस्तिका के प्रथम पृष्ठ में दर्ज अंकों में भिन्नता है,
- 77 अभ्यर्थियों की उत्तर पुस्तिकाओं के प्रथम पृष्ठ पर अंकित कुल प्रासांक एवं हल किये गये प्रश्नों के प्रासांको के योग में भिन्नता थी,

- 20 अभ्यर्थियों की उत्तर पुस्तिकाओं में पाया गया कि प्रश्नों हेतु निर्धारित पूर्णांक से अधिक नम्बर दिये गये थे,
- 12 अभ्यर्थियों की उत्तर पुस्तिकाओं में एक प्रश्न को 02 बार हल किया गया और उन्हें मूल्यांकित किया गया,
- 181 अभ्यर्थियों की उत्तर पुस्तिकाओं में कई उत्तरित प्रश्नों का मूल्यांकन नहीं किया गया है।
- 220 अभ्यर्थियों की उत्तर पुस्तिकाओं के प्रश्नों में प्राप्तांकों में धनात्मक अथवा ऋणात्मक परिवर्तन पाया गया, जो एक बहुतायत संख्या है।"

22. The committee was of the opinion that considering the mass and systematic irregularities in the examination process no segregation of tainted and untainted candidates would be possible. Whole sanctity and validity of the examination had been violated, therefore, the result was vitiated.

The conclusion arrived at by the enquiry committee in its report dated 29.06.2022 reads as under:-

" निष्कर्ष : प्रमुख अभियन्ता कार्यालय द्वारा उत्तीर्ण घोषित अभ्यर्थियों की सूची एवं जिलेदारी अर्ह परीक्षा आयोजन समिति-2018 द्वारा तैयार किये गये। परीक्षाफल (लिखित परीक्षा एवं साक्षात्कार की अंकतालिका) का मिलान, साक्षात्कार की सदस्यवार अंकतालिका एवं परीक्षाफल मिलान, लिखित परीक्षा की अंकतालिका एवं उत्तर पुस्तिकाओं के प्रथम पृष्ठ पर अंकित किये गये अंको का मिलान, उत्तर पुस्तिकाओं के प्रथम पृष्ठ पर अंकित कुल अंक एवं हल प्रश्नों के प्राप्तांकों के जोड़ (टेबुलेशन) का मिलान, पूर्णांक से अधिक प्राप्तांक वाले हल प्रश्न, दो बार मूल्यांकित प्रश्न में पायी गयी त्रुटियों के आधार पर त्रुटियुक्त एवं त्रुटिरहित उत्तर पुस्तिकाओं वाले अभ्यर्थियों को क्रमशः TABLE-A एवं TABLE-B में दर्शाया गया है। अनेक उत्तर पुस्तिकाओं में मूल्यांकन हेतु अवशेष हल प्रश्न (टबल संख्या-5) पाये गये हैं। इस स्थिति में समिति किसी भी अन्तिम निष्कर्ष पर पहुँचने में असमर्थ है।"

23. In the meantime, a contempt petition being Contempt Application No.804 of 2022 alleging non compliance of the order dated 05.08.2021 passed in Writ Petition No.20263(SS) of 2020 was filed. A notice was

issued in the said contempt petition and under the pain of the contempt, Engineer-in-chief in the Department of Irrigation and Water Resources, Sri Ashok Kumar Singh vide Order Nos.1500 and 1506 dated 21.07.2022 cancelled the order dated 26.07.2019, which was already set aside by this Court vide order dated 05.08.2021, and vide order dated 21.07.2022 declared the result of "Ziledari Qualifying Examination, 2018".

**24.** A compliance affidavit came to be filed by then Engineer-in-chief on 25.07.2022, which led to the dismissal of the contempt application vide order dated 25.07.2022.

**25.** It is relevant to take note of the fact that the State Government vide order dated 16.02.2022 directed the Engineer-in-chief to submit proposal for further proceedings in reference to the judgment and order dated 05.08.2021 passed in Writ A No.20263(SS) of 2020.

**26.** The Engineer-in-Chief without seeking any prior approval from the State Government unauthorizedly and ignoring the direction issued by the State Government vide order dated 16.02.2022 under the pain of the contempt, issued the order dated 21.07.2022 for declaring the result of untainted candidates. Engineer-in-chief also did not consider the entire facts and finding recorded in the enquiry report dated 29.06.2022 and 08.07.2022 regarding gross and systematic irregularities, and malpractices in entire process of examination including evaluation of the answer sheets, thereby seriously affecting sanctity, validity and fairness of the examination.

**27.** Sri Ashok Kumar Singh retired from service within 9 days from the date of issuing order dated 21.07.2022. Sri Mushtaq Ahmad had taken over the charge of the post of Engineer-in-chief on 01.08.2022.

**28.** The petitioner filed second contempt application being Contempt No.2017 of 2022 (Saurabh Tripathi & Ors vs Mushtaq Ahmad) arraying Sri Mushtaq Ahmad as opposite party alleging non compliance of the judgment and order dated 05.08.2021. On 05.11.2022, the contempt court passed the following order:-

"Heard Shri H.J.S. Parihar, Advocate assisted by Shri Shashank Singh, learned counsel for the applicant and Shri Sunil Bajpayee, learned Additional Chief Standing Counsel for the opposite party.

Shri Sunil Bajpayee, learned Additional Chief Standing Counsel has placed written instruction, dated 14.11.2022 and requested for four weeks time to file affidavit of compliance.

The aforesaid prayer is hereby rejected.

List this case on 28.11.2022.

In the meantime, opposite party shall file affidavit of compliance, failing which, opposite party shall appear in person before this Court on the date fixed for framing of charge."

**29.** Before passing the said order in the contempt petition, the Government vide orders dated 24.08.2022 and 09.09.2022 asked for explanation that under what circumstances result of qualifying examination was declared illegally and the Government was not consulted before issuing the order dated 21.07.2022 declaring the result of the tainted and ineligible candidates.

**30.** Considering the enquiry reports dated 29.06.2022 and 08.07.2022, the judgment and orders dated 05.08.2021 passed in Writ Petition No.20263(SS) of 2020 and 25.03.2021 passed in Writ A No.1965 of 2021, impugned decision has been taken vide order dated 25.11.2022 cancelling the result of "Ziledari Qualifying Examination, 2018" and also holding fresh qualifying examination for the purposes of promotion to the post of Ziledars. Said examination was to be held on 20-25.12.2022, and the examination already held on 21.10.2022 in compliance of the order dated 25.03.2022 passed in Writ A No.1965 of 2021 and declare the result of both the examination on 16.01.2023. However, because of the interim order, said direction has not been carried out.

**31.** Record of the "Ziledari Qualifying Examination, 2018" has been submitted before this Court including the result and the enquiry reports.

**32.** From perusal of the record it would be evident that gross and systematic illegality and irregularities has been committed in the "Ziledari Qualifying Examination, 2018", which had impacted the very sanctity and fairness of the examination and have resulted the vitiation of the result of "Ziledari



Qualifying Examination, 2018". A brief summary of the illegalities and regularities as mentioned in the impugned order, is reproduced as under:-

"उपरोक्त तथ्यों के विवेधन, परीक्षण एवं परिशीलन से विदित है कि जिलेदारी अर्हकारी परीक्षा--2018 के सम्पादन से लेकर अब तक जो भी कार्यवाहियां की गयी है, उससे स्पष्ट है कि मामले में व्यापक स्तर पर अनेक गम्भीर प्रकृति की अनियमिततायें की गयी है, जिनका विवरण निम्नवत है : -

(1) परीक्षा समिति द्वारा सम्मिलित सभी 490 अभ्यर्थियों का साक्षात्कार लिया गया, जबकि इनमें से तत्समयं मात्र 318 अभ्यर्थी ही लिखित परीक्षा में अर्हकारी न्यूनतम निर्धारित 50 प्रतिशत अंक ही प्राप्त कर सके थे अर्थात् परीक्षा समिति द्वारा 172 अनुत्तीर्ण अभ्यर्थियों का नियमों के विपरीत साक्षात्कार लिया गया।

(2) प्रारम्भिक जाँच (मुख्। अभियन्ता (कार्मिक-7/8) की अध्यक्षता में गठित 02 सदस्यीय समिति) में मात्र 76 शिकायतकर्ताओं की उत्तर पुस्तिकाओं की जाँच में ही अभ्यर्थियों के प्राप्त योग में अन्तर, उत्तर के मूल्यांकन न किया जाना तथा एक ही प्रश्न के अलग-अलग उत्तर अंकित होने पर भी समान अंक दिया जाना जैसी गम्भीर अनियमिततायें कारित किया जाना तथा परीक्षा परिणाम प्रभावित होना जाँच आख्या में पाया गया था, जिसके फलस्वरूप प्रमुख अभियन्ता एवं विभागाध्यक्ष की अध्यक्षता में गठित समिति द्वारा सर्वसम्मति से घाषित परीक्षा परिणाम को आदेश दिनांक 26.07.2019 द्वारा निरस्त किया गया।

(3) परीक्षा में भ्रष्टाचार एवं विश्व लिये जाने विषयका सोशल मीडिया में वीडियो का वायरल होना, समाचार पत्र में खबर प्रकाशित होने से परीक्षा की शुचिता एवं पारदर्शिता प्रतिकूल रूप से प्रभावित हुई।

(4) जिलेदारी अर्हकारी परीक्षा-2018 की परीक्षा एवं मूल्यांकन में पायी गयी गम्भीर अनियमितताओं के लिए विनिर्दिष्ट परीक्षा समिति के अध्यक्ष संहित दोनों सदस्यों के विरुद्ध शासन के उच्चतम स्तर से एफ०आई०आर० दर्ज कराये जाने, उन्हें निलंबित कर अनुशासनिक कार्यवाही के आदेश/निर्देश जारी किये गये हैं। समिति के अध्यक्ष श्री रामेश्वर कुमार मिश्रा एवं सदस्य श्री रामराज के विरुद्ध, संस्थित अनुशासनिक कार्यवाहियों में शासन द्वारा भिन्न मत के आधार पर आरोप प्रमाणित पाते हुए उनके अभ्यावेदन मांगे गये हैं, जबकि एक अन्य सदस्य

श्री राजकुमार गंगवार के विरुद्ध मुख्यालय स्तर पर अनुशासनिक कार्यवाही प्रचलित है।

(5) मा० उच्च न्यायालय, इलाहाबाद द्वारा रिट याचिका संख्या-1965 / 2021 धर्मेन्द्र कुमार व अन्य बनाम उ०प्र० राज्य व अन्य में पारित आदेश दिनांक 25.03.2021 में जिलेदारी अर्हकारी परीक्षा को पुनः कराये जाने के आदेश दिये गये।

(6) मा० उच्च न्यायालय खण्डपीठ, लखनऊ द्वारा रिट याचिका संख्या-20263(एस.एस.)/2020 हेतराम व अन्य में पारित आदेश दिनांक 05.08.2021 के अनुपालन / अनुक्रम में गाठित SEGREGATE कमेटी की जाँच रिपोर्ट में पाया गया कि :

- 02 अभ्यर्थियों की लिखित परीक्षा की अंकतालिका एवं उत्तर पुस्तिका के प्रथम पृष्ठ में दर्ज अंको में भिन्नता है,
- 77 अभ्यर्थियों की उत्तर पुस्तिकाओं के प्रथम पृष्ठ पर अंकित कुल प्राप्तांक एवं हल किये गये प्रश्नों के प्राप्तांको केटो में भिन्नता थी,
- 20 अभ्यर्थियों की उत्तर पुस्तिकाओं में पाया गया कि प्रश्नों हेतु निर्धारित पूर्णांक से अधिक नम्बर दिये गये थे,
- 12 अभ्यर्थियों की उत्तर पुस्तिकाओं में एक प्रश्न को 02 बार हल किया गया और उन्हें मूल्यांकित किया गया,
- 181 अभ्यर्थियों की उत्तर पुस्तिकाओं में कई उत्तरित प्रश्नों का मूल्यांकन नहीं किया गया है।
- 220 अभ्यर्थियों की उत्तर पुस्तिकाओं के प्रश्नों में प्राप्तांको में धनात्मक अथवा ऋणात्मक परिवर्तन पाया गया, जो एक बहुतायत संख्या है।

(7) परीक्षण में यह तथ्य भी उद्घाटित हुआ कि परीक्षा समिति द्वारा उत्तर पुस्तिकाओं के मूल्यांकन से पूर्व कोई मॉडल अन्सर (उत्तर कुंजी) नहीं बनाया गया था, जिसके फलस्वरूप उत्तरित फल के मूल्यांकन हेतु कोई एकरूपता नहीं रही एवं गलत उत्तरों पर भी नम्बर दिये गये, एक ही प्रश्न के भिन्न-भिन्न उत्तर होने के उपरान्त भी उन्हें पूरे अंक दिये गये।"

**33.** In the contempt application, copy of the impugned order dated 25.11.2022 was filed with an affidavit. The contempt Court vide order dated 28.11.2022 directed the Chief Secretary of the State to file his affidavit posting the matter for 16.12.2022.

**34.** In compliance of the said order, personal affidavit of Chief Secretary was filed in the contempt proceedings. Contempt Court was not satisfied with the personal affidavit of the Chief Secretary, and posted the matter on

23.12.2022 for framing of the charge. On 23.12.2022 the contempt Court framed following charges:-

"8. In view above facts and circumstances, following charge is framed against the respondent/contemnor under Section 12 of the Contempt of Courts Act, 1971.

"Why the respondent/contemnor, Mr. Mushtaq Ahmad, Engineer-in-Chief/Head of Department of Irrigation and Water Resources, U.P., Lucknow be not punished for willfully flouting the order of the writ Court dated 05.08.2021 passed in Writ Petition (S/S) No. 20263 of 2020, by not giving promotion to the applicants on the post of Zileadar, even after filing of the affidavit of compliance dated 25.07.2022 in earlier Contempt Application No. 804 of 2022; as also passing of the order dated 25.11.2022, by which, the order dated 21.07.2022 passed by the then Engineer-in-Chief of the Department (declaring the result of 335 selected candidates in pursuance of the order of the writ Court dated 05.08.2021), has been recalled despite the prayer having been made by the learned Additional Chief Standing Counsel to comply the order of the writ Court on the basis of respondent/contemnor's written instructions dated 14.11.2022."

9. List this case on 23.01.2023 for order on sentence.

10. On the next date, respondent/contemnor shall appear before this Court. In the meantime, respondent/contemnor may file response on the point of sentence."

**35.** Against the orders dated 21.12.2023 and 23.12.2023, a contempt appeal being Contempt Appeal No.1 of 2023 has been filed.

**36.** Vide order dated 23.01.2023 in the Contempt Appeal No.1 of 2023 taking note of the fact that writ petition arising out of the order dated 25.11.2022 is pending and whether the competent authority has jurisdiction to nullify the previous order passed on 21.07.2022 or not, is subject matter of consideration in the writ petition, and the matter has to be decided on its merit, the Division Bench permitted the contempt proceedings to go on.

However, final order so passed should not be acted upon without seeking leave of the court.

37. Relevant part of the order dated 23.01.2023 would read as under:

"Sri Ramesh Kumar Singh, learned Additional Advocate General assisted by Shri Pankaj Khare and Shri Prashant Singh Atal has submitted that the learned Single Judge in the present case is proceeding with the contempt proceedings notwithstanding the fact that the act complained of, is simultaneously sub-judice before this Court in Writ Petition No. 8335 of 2022. It is thus submitted that in a situation where the pending writ petition, if it entails the consequence for dismissal, the initiation of contempt proceedings arising out of the same order would be a nullity and outside the domain of the jurisdiction of the contempt court and he has also placed reliance upon the judgment reported in (2006) 5 SCC 399.

It is undisputed that the writ petition arising out of the order dated 25.11.2022 is pending. As to whether the competent authority has a jurisdiction to nullify the previous order passed on 21.07.2022 or not is a subject matter of consideration in the writ proceedings and the matter has to be decided on its own merit.

In the circumstances of the case, we hereby permit the contempt proceedings to go on, however, the final order so passed may not be acted upon without seeking leave of the Court.

We also expect the pending writ petition to be brought to its logical conclusion in the meantime.

The State Government is expected to co-operate in the adjudication of writ proceedings and the alleged contemnor in the contempt proceedings without showing any indolence.

List this appeal after six weeks alongwith the status of contempt proceedings."

**38.** Considering the enquiry reports in respect of the gross and systematic irregularities, corruption and malpractices in the examination, which had impacted the very sanctity, validity and fairness of the whole examination process which had led the vitiation of the result, this Court vide order dated 06.04.2023 passed the following order:-

"1. Heard Mr. H.G.S. Parihar, learned Senior Advocate, assisted by Ms Meenakshi Singh, Advocate for the petitioners as well as Mr. Ramesh Kumar Singh, learned Senior Advocate/Additional Advocate General, assisted by Mr. P.K. Khare, learned Chief Standing Counsel, for respondents - State Authorities.

2. Mr. Anil Grag, Principal Secretary, Irrigation Department, is present to assist the Court. He submits that if this Court permits for holding an integrated examination for all the vacancies, which are existing till today, the Department will conduct the examination and publish its result within a period of next 45 days. He further submits that to ensure fairness and integrity of the examination, a five members committee, consisting engineer-in-chief, (project), engineer-in-chief (design & planning), chief engineer (level-i) and two superintending engineers would be constituted, which would supervise the entire process of the examination. It is further submitted that two special secretaries in the Department of Irrigation would be appointed as special observers so that the examination is conducted in a free, fair and impartial manner, and there would be no further litigation in respect of any irregularity in examination. It is further stated that the State is not siding with anyone, but it is only concerned to ensure the fairness and integrity of the examination.

3. It is stated that one more petition (Writ - A No. 7022 of 2022), on the same subject matter, is pending.

4. On the joint request, let this matter be put up/listed tomorrow i.e. 07.04.2023 at 2.15 p.m. for further hearing along with Writ - A No. 7022 of 2022."

**39.** Sri H.G.S. Parihar, learned Senior Advocate assisted by Ms. Meenakshi Singh Parihar, learned counsel appearing for the petitioners has submitted that impugned order dated 25.11.2022 whereby earlier select list dated 21.07.2022 has been cancelled, is illegal, arbitrary and is in violation of the judgment and order dated 05.08.2021 passed by this Court in Writ Petition No.20263(SS) of 2020.

**40.** It has been further submitted that this Court has held in the judgment and order dated 05.08.2021 passed in Writ Petition No.20263(SS) of 2020 that exercise of separating tainted and untainted candidate was completed and, thereafter the order dated 21.07.2022 was passed declaring the result of untainted candidates and on the basis of affidavit filed by the then Engineer-in-chief, contempt proceedings were dropped. Impugned order is not only against the judgment and order dated 05.08.2021 but it is also against the order dated 25.07.2022 whereby the contempt proceedings were dropped.

**41.** It has been further submitted that fresh examination would result in grave injustice to the candidates, who did not indulge in any malpractice and could qualify the examination on merit. Several candidates would have crossed the age bar and several candidates have got retired since the result of the examination was declared in the year 2019. He, therefore, has submitted that the impugned order is liable to be set aside and the petitions be allowed.

**42.** On the other hand, Sri Ramesh Kumar Singh, learned Senior Advocate and Additional Advocate General appearing for the State-respondents has submitted that Sri Ashok Kumar Singh, then Engineer-in-chief had no authority and power to pass the order dated 21.07.2022, 10 days before the date of his retirement to avoid contempt proceedings. Since, the order dated 21.07.2022, was illegal and without jurisdiction and against the enquiry reports, which categorically mentioned the gross and systematic irregularities, large scale corruption and malpractice, such order is not liable to be acted upon and, therefore, the Government has taken a conscious decision to conduct fresh examination giving opportunity to all the eligible candidates to participate in the examination, in order to ensure

that and the selection is made totally on the basis of merit without any blemish in conducting the exam.

**43.** It has been, therefore, submitted that no promotion has been made in pursuance of the "Ziledari Qualifying Examination, 2018", therefore, no-one is prejudiced. It has been further submitted that it is always open to the appointing authority to cancel the examination, even if the result is declared to make appointment if it is found that the entire examination is vitiated. In the present case, two successive enquiry reports have enlisted gross irregularities, malpractices and corruption in conducting the examination whereby impacting very sanctity, legality and fairness of the examination which had vitiated the result, such a result should not be acted upon. Fairness and transparency of the selection process is hallmark of the governance and is requirement under Articles 14 and 16 of the Constitution of India. If there is material which would demonstrate that fairness of the examination was violated and the result was vitiated, it is not in the interest of anyone to give effect to the said result.

**44.** It has been further submitted that there are two divergent judgments of this Court. This Court at Allahabad vide judgment and order dated 25.03.2021 directed for holding fresh examination whereas the order dated 05.08.2021 passed by this Court at Lucknow in Writ Petition No.20263(SS) of 2020 directed for separating the tainted and untainted candidates. The successive enquiry reports would suggest that it would not be possible to separate tainted and untainted candidates looking at the gross and systematic irregularities and corruption in the examination. He, therefore, has submitted that order dated 21.07.2022 passed by the then Engineer-in-chief, who retired 9 days thereafter, to avoid contempt proceedings, being without jurisdiction cannot be directed to be acted upon. This Court is required to decide the case afresh on merit. It has been submitted that the Government has taken a correct decision in accordance with constitutional mandate under Articles 14 and 16 of the Constitution of India and, therefore, the same should be allowed to be acted upon.

**45.** I have considered the submissions of learned Senior Advocate appearing for the petitioners and learned A.A.G. for the State-respondents.

**46.** Selection for public employment must be fair, impartial and in accordance with the provisions of recruitment rules and the mandate of Articles 14 and 16 of the Constitution of India. If there are systematic irregularities, corruption and malpractices, selection process would get vitiated as it would be in violation of the equality clause as enshrined in Articles 14 and 16 of the Constitution of India.

**47.** If the recruitment process has resulted violation of sanctity and fairness of the process itself, such a recruitment process gets vitiated and ought to be cancelled. Irregularities enlisted hereinabove have been found in successive enquiry reports. The three members committee, which was responsible for conducting the examination, have been found to have indulged in large scale corruption and allowed systematic irregularities and malpractices in the examination. Not only disciplinary proceedings have been directed to be initiated against the members of the examination committee but the FIR has also been directed to be lodged against them.

**48.** In my view, result of such an examination cannot be given effect to as it would amount to putting premium on gross and systematic irregularities, malpractices and corruption committed in conducting the examination. This Court should ensure that the recruitment process is fair, impartial and as per the mandate of statutory prescription and equality clause as enshrined under Articles 14 and 16 of the Constitution of India. Any recruitment process to public post should be beyond any suspicion and any malpractice. Corruption in public employment would be against the constitutional goal of Equality of status and of opportunity, a goal enshrined in the preamble of the Constitution. Recruitment has to be fair, transparent and accountable, if there are irregularities and malpractices and illegality in the recruitment process, it would undermine very legitimacy of the recruitment process.

**49.** A fair and reasonable process of selection to public posts subject to the norm of equality of opportunity under Article 16(1) is a constitutional requirement. A fair and reasonable process is a fundamental requirement of Article 14 as well. Where the recruitment to public employment stands vitiated as a consequence of systemic fraud or irregularities, the entire process becomes illegitimate. Large scale irregularities including those



which have the effect of denying equal access to similarly circumstanced candidates would erode credibility of the selection process.

50. In the present case, as the reports of the committees would suggest that there was no possibility to segregate the candidates, who had indulged in malpractices and deficiencies of serious nature found in the enquiries which had impacted the very legitimacy of the entire examination process, therefore, decision of the Government to cancel the entire examination cannot be held to be irrational or arbitrary.

51. The Supreme Court in the Case of **Sachin Kumar & Ors vs Delhi Subordinate Service : (2021) 4 SCC 631** in para 35 and 55 had held that a fair and reasonable process of selection to posts subject to the norm of equality of opportunity under Article 16(1) of the Constitution of India is a constitutional requirement.

Para 35 and 55 of the aforesaid judgment would read as under:-

"35. In deciding this batch of SLPs, we need not reinvent the wheel. Over the last five decades, several decisions of this Court have dealt with the fundamental issue of when the process of an examination can stand vitiated. Essentially, the answer to the issue turns upon whether the irregularities in the process have taken place at a systemic level so as to vitiate the sanctity of the process. There are cases which border upon or cross over into the domain of fraud as a result of which the credibility and legitimacy of the process is denuded. This constitutes one end of the spectrum where the authority conducting the examination or convening the selection process comes to the conclusion that as a result of supervening event or circumstances, the process has lost its legitimacy, leaving no option but to cancel it in its entirety. Where a decision along those lines is taken, it does not turn upon a fact-finding exercise into individual acts involving the use of malpractices or unfair means. Where a recourse to unfair means has taken place on a systemic scale, it may be difficult to segregate the tainted from the untainted participants in the process. Large-scale irregularities including those which have the effect of denying equal access to similarly circumstanced candidates are suggestive of a malaise which has eroded the credibility of the process. At the other end

of the spectrum are cases where some of the participants in the process who appear at the examination or selection test are guilty of irregularities. In such a case, it may well be possible to segregate persons who are guilty of wrongdoing from others who have adhered to the rules and to exclude the former from the process. In such a case, those who are innocent of wrongdoing should not pay a price for those who are actually found to be involved in irregularities. By segregating the wrongdoers, the selection of the untainted candidates can be allowed to pass muster by taking the selection process to its logical conclusion. This is not a mere matter of administrative procedure but as a principle of service jurisprudence it finds embodiment in the constitutional duty by which public bodies have to act fairly and reasonably. A fair and reasonable process of selection to posts subject to the norm of equality of opportunity under Article 16(1) is a constitutional requirement. A fair and reasonable process is a fundamental requirement of Article 14 as well. Where the recruitment to public employment stands vitiated as a consequence of systemic fraud or irregularities, the entire process becomes illegitimate. On the other hand, where it is possible to segregate persons who have indulged in malpractices and to penalise them for their wrongdoing, it would be unfair to impose the burden of their wrongdoing on those who are free from taint. To treat the innocent and the wrongdoers equally by subjecting the former to the consequence of the cancellation of the entire process would be contrary to Article 14 because unequals would then be treated equally. The requirement that a public body must act in fair and reasonable terms animates the entire process of selection. The decisions of the recruiting body are hence subject to judicial control subject to the settled principle that the recruiting authority must have a measure of discretion to take decisions in accordance with law which are best suited to preserve the sanctity of the process. Now it is in the backdrop of these principles, that it becomes appropriate to advert to the precedents of this Court which hold the field.

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55. L. Nageswara Rao, J. held that the view of the Division Bench of the High Court was unsustainable and observed : (*A Kalaimani case [State of T.N. v. A Kalaimani, (2021) 16 SCC 217 : 2019 SCC OnLine SC 1002]* , SCC para 14)

“14. In the instant case, the Board initially conducted an inquiry on its own regarding the allegations pertaining to manipulation of the OMR answer sheets. The Board found that a few people benefited due to the tampering of the OMR answer sheets. On a deeper scrutiny sufficient material was found against 196 persons who were beneficiaries of the fraud in the alteration of marks. The Board was convinced that there were chances of more people being involved in the manipulation of marks for which reason a decision was taken to cancel the entire examination. A bona fide decision taken by the Board to instill confidence in the public regarding the integrity of the selection process could not have been interfered with by the High Court. Sufficiency of the material on the basis of which a decision is taken by an authority is not within the purview of the High Court in exercising its power of judicial review. More material is being unearthed in the investigation and several people have been arrested. The investigation is in progress.”

The Court noted that candidates who had a chance of being selected and appointed as lecturers in Government Polytechnic Colleges on the basis of the results of the written examination may be inconvenienced “but a serious doubt entertained by the Board about the magnitude of the manipulation of the examination has to be given due weightage”. The judgment of the High Court was accordingly set aside."

52. The Supreme Court has summarized the law in respect of cancelling the examination where there has been systematic nature of irregularities and deficiencies, which would cast serious doubts on legitimacy of entire recruitment process.

Para 64 to 66 of the said judgment would read as under:-

"64. We find on the basis of the record that there is substance in the submission which has been urged by the ASG. The complaints in regard to the recruitment process related both to the Tier I and Tier II

examinations. The complaints were carefully analysed by the first Committee and as noted earlier serious irregularities were found. The irregularities were not confined to acts of malpractice or unfair means on the part of a specific group of persons. On the contrary, the report of the Committee found deficiencies of a systemic nature which cast serious doubts on the legitimacy of the entire process of recruitment involving both the Tier I and Tier II examinations. The Order of the Deputy Chief Minister dated 23-12-2015 did not differ with the conclusions of the first Committee. In fact, the said order refrained from commenting on the findings of the first Committee. All that the Deputy Chief Minister's order directed was the narrowing of the scope of further investigation to one of the irregularities, that is, impersonation. In directing that a verification be carried out on whether any of the candidates in the zone of selection had been guilty of impersonation, the Deputy Chief Minister's order did not wipe out the irregularities in the entire examination process. It is not possible to accept the submission that after ordering a verification on impersonation, nothing further remained to be done and that there could be no further rejection of the sanctity of the process on the basis of the report of the first Committee. It is quite possible that the Deputy Chief Minister directed a further investigation into the allegations of impersonation only to lend credibility to the ultimate decision which he would take. Mr Patwalia has made a strenuous effort to read from the explanation submitted by DSSSB, urging that as many as three IAS officers and other officers who had appended their signatures to the explanatory note provided a justification to the defence that the Tier I and Tier II examinations did not suffer from flaws. It must be noted that the conduct of DSSSB and its officials was itself under a cloud. Their explanation could by no means be regarded as conclusive or binding upon the authorities of GNCTD. The Deputy Chief Minister in recommending that the entire process be cancelled emphasised the systemic nature of the violations which had taken place. These violations may or may not involve all of the candidates within the ultimate

zone of selection but that in our view is beside the point for the simple reason that the gravamen of the charge in the present case is not in regard to the taint which attaches to a specific group of persons but to the sanctity of the recruitment process as a whole. The precedents of this Court sufficiently demonstrate that when the credibility of an entire examination stands vitiated by systemic irregularities, the issue then is not about seeking to identify the candidates who are tainted. In the present case, as we have seen, there was a basic denial of equal access to the Tier I examination. The nature of the allegations which were found to be substantiated upon a careful examination by the first Committee showed that the credibility of the process itself had been eroded. In such a situation, where a decision is taken by the Government to cancel the entire process, it cannot be held to be irrational or arbitrary, applying the yardstick of fair procedure and proportionality to the decision-making process.

**65.** During the course of his submissions, Mr P.S. Patwalia has sought to provide explanations for each of the systemic irregularities pointed out by the first Committee, including the drastic reduction in the number of candidates who appeared for the Tier I examination, non-issuance of hard copies of admit cards, shortlisting of candidates belonging to a certain geographical area, lack of randomisation in the examination centres, among others. In response to this, the learned ASG has pointed out that while assessing whether the recruitment process has been compromised, the factors (or irregularities) must be looked at cumulatively to ascertain whether they are sufficiently grave to cancel the recruitment. We find ourselves in agreement with the learned ASG. So long as there is sufficient basis to contend that mass-scale irregularities have occurred, this Court need not indulge in a roving inquiry to rule out all possible explanations and alternative scenarios where such irregularities would be justified.

**66.** Recruitment to public services must command public confidence. Persons who are recruited are intended to fulfil public functions associated with the

functioning of the Government. Where the entire process is found to be flawed, its cancellation may undoubtedly cause hardship to a few who may not specifically be found to be involved in wrongdoing. But that is not sufficient to nullify the ultimate decision to cancel an examination where the nature of the wrongdoing cuts through the entire process so as to seriously impinge upon the legitimacy of the examinations which have been held for recruitment. Both the High Court and the Tribunal have, in our view, erred in laying exclusive focus on the report of the second Committee which was confined to the issue of impersonation. The report of the second Committee is only one facet of the matter. The Deputy Chief Minister was justified in going beyond it and ultimately recommending that the entire process should be cancelled on the basis of the findings which were arrived at in the report of the first Committee. Those findings do not stand obliterated nor has the Tribunal found any fault with those findings. In this view of the matter, both the judgments of the Tribunal and the High Court are unsustainable."

53. In view thereof, I find decision of the Government is as per the mandate of the Constitution and goal as set out in the preamble of the Constitution, therefore, it is not required to be interfered with.

54. With the aforesaid discussion, the present writ petition is **dismissed**.  
No costs.

55. The respondents are directed to conduct the examination and publish its result within a period of next 60 days from today. To ensure fairness, sanctity and integrity of the examination, a five members committee, consisting of Engineer-in-Chief, (project), Engineer-in-Chief (Design & Planning), Chief Engineer (Level-I) and two Superintending Engineers would be constituted, which would supervise the entire process of the examination. Two Special Secretaries in the Department of Irrigation and Water Resources should be appointed as Special Observers so that the examination is conducted in a free, fair and impartial manner, and there would be no further litigation in respect of any irregularity in the examination as noted in the order dated 06.04.2023 extracted hereinabove.

The State is not siding with anyone, but it is only concerned to ensure the fairness, sanctity and integrity of the examination for which the tainted result of the examination has been cancelled.

**(Dinesh Kumar Singh, J.)**

**Order Date :- 27.04.2023**

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